

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PENDLETON DIVISION

DONALD-ERNEST ALLEE,

Plaintiff,

Civil No. 10-655-SU

v.

ORDER

OREGON DEPARTMENT OF  
CORRECTIONS, et al.,

Respondent.

SULLIVAN, Magistrate Judge.

Plaintiff filed a "Notice of Removal" seeking to "remove" claims from a state court proceeding to this court. By Order (#11) entered July 29, 2010, the "Notice" was construed as an

attempt to allege civil rights violations. However the "complaint" failed to comply with the minimal pleading requirements of the Federal Rules and was otherwise deficient.

Plaintiff was advised of the deficiencies of his complaint and allowed 30 days to file an amended complaint. Plaintiff was advised that failure to file an amended complaint would result in the dismissal of this action for failure to prosecute.

Plaintiff did not filed an amended complaint as ordered or request an extension of time in which to do so. Accordingly, Findings and Recommendation (#17) entered September 13, 2010, recommended that plaintiff's claims be dismissed without prejudice and this action should be dismissed for failure to failure to prosecute. The Findings and recommendation further recommended that plaintiff's Motion for Summary Judgment (#13) and Second Motion for Temporary Injunctive Relief (#14) should be denied as moot.

On September 7, 2010, plaintiff filed a Motion to Excuse Default Due to Defendant's Lack of Pens in SCRI's DSU Housing Units" (#16). Plaintiff alleges that he was unable to timely respond to the court's order to file an amended complaint because he did not have a instrument with which to write.

Therefore, the Findings and Recommendation (#17) is hereby withdrawn. Plaintiff is allowed 30 days from the date of this order to file an amended complaint as set forth in the court's Order (#11). Plaintiff is advised that failure to file an amended complaint as ordered will result in the dismissal of this proceeding and that no further extensions of time will be allowed.

Plaintiff's Motions (#13) and (#14) are denied without prejudice to re-file after plaintiff has filed an amended complaint.

DATED this 18th day of October, 2010.

s/ Patricia Sullivan

Patricia Sullivan

United States Magistrate Judge